

7

The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 22

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte EDWARD W. LIU

Appeal No. 2000-0716
Application No. 08/840,947

ON BRIEF

MAILED

MAY 20 2002

PAT. & T.M. OFFICE
BOARD OF PATENT APPEAL
AND INTERFERENCES

Before KRASS, JERRY SMITH, and LALL, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellant requests rehearing of our decision of October 19, 2001 wherein we sustained the examiner's rejection of claims 1, 4, 14-16, 20-22, 24-26 and 29 under 35 U.S.C. 102(b) and the rejection of claims 17 and 23 under 35 U.S.C. 103.

We did not sustain the rejection of claims 2, 5-7, 9-13, 27 and 28 under 35 U.S.C. 102(b) and we did not sustain the

Appeal No. 2000-0716
Application No. 08/840,947

rejection of claims 3, 8 and 18 under 35 U.S.C. 103 but, presumably, appellant is not requesting a rehearing on our decision as it regards these claims.

More particularly, appellant contends that we may have overlooked appellant's arguments rebutting the examiner's position that the two circuits of Iwami would have output noise components, resulting in noise experienced by the circuits, that are approximately equal. Appellant argues that claims 1, 14, 16 and 24 (Group I) recite the feature that two circuits have output noise components, resulting from noise experienced by the circuits, that are approximately equal and that this claim limitation is somewhat different than merely requiring that two circuits experience the same interference noise or electromagnetic environmental noise.

While we agree with appellant that environmental noise within a system will vary greatly based on distances from noise sources within a system, it is fairly clear from Iwami's disclosure, at Figure 2, that the two circuits are part of the same amplifier circuit, depicted in box 34, and it would appear fairly certain that, in this case, the distances of the two circuits in Iwami from any noise source will be approximately equal which would indicate to us that the output noise

Appeal No. 2000-0716
Application No. 08/840,947

components, resulting from noise experienced by the circuits, will be "approximately equal," as claimed.

We remain unconvinced, by appellant's argument regarding physical layout of the circuits taking into account distances from existing noise sources, orientations relative to the noise sources, component and interconnection sizes, and/or various other factors, that the two circuits of Iwami do not output approximately equal noise components. Clearly, as shown in Figure 2 of Iwami, the two circuits are apparently proximate to each other, within a confined amplifier circuit, of similar component sizes and oriented in a similar manner. Accordingly, an artisan would have understood that the noise components output by these circuits, resulting from noise experienced by the circuits, would be "approximately equal." Appellant has offered no evidence that the circuits within the amplifier circuit 34 of Iwami are not functionally similar to the extent that the noise components output by these circuits would not be "approximately equal." Accordingly, in view of what we perceive to be a prima facie case of anticipation presented by the examiner, appellant has offered us nothing to convince us that the examiner's position is in error.

Appeal No. 2000-0716
Application No. 08/840,947

At page 4 of the request for rehearing, appellant states that

Because Iwami's amplifiers 38 and 40 *most likely* are multi-component circuits...with interconnections between such components, each component and each interconnection of each amplifier *might* experience and/or output a different level of environmental noise. As a result, the cumulative noise signal output by each amplifier is very likely to be different [emphasis added].

Thus, appellant is speculating that Iwami's circuits may not output noise components that would have been "approximately equal" because of certain assumptions. However, in view of the apparently equivalent components shown in Figure 2 of Iwami which are in close proximity to each other and apparently oriented similarly, the preponderance of the evidence would appear to indicate that these components would have output noise components that are "approximately equal." Thus, appellant must offer something more than mere speculation to overcome the prima facie case of anticipation established by the examiner.

Appellant contends [request for rehearing-page 6] that because Iwami does not address the various factors that influence the noise components output by the amplifiers 38 and 40, Iwami could not possibly have disclosed that such amplifiers have

Appeal No. 2000-0716
Application No. 08/840,947

output noise components, resulting from noise experienced by such amplifiers, that are approximately equal.


We disagree. Clearly, the amplifiers of Iwami have output noise components and these output noise components are caused by the "various factors" addressed by appellant even if Iwami does not specifically address these factors. However, because the amplifier components shown in Figure 2 of Iwami are apparently equivalent, situated in close proximity to each other, and apparently oriented similarly, the output noise components of these amplifiers, resulting from noise experienced by the amplifiers, are, prima facie, "approximately equal" and appellant has offered no convincing evidence to the contrary.

We have granted appellant's request for rehearing to the extent that we have reconsidered our decision in view of appellant's remarks in such request but we deny said request with respect to making any changes therein.

Appeal No. 2000-0716
Application No. 08/840,947

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED


ERROL A. KRASS
Administrative Patent Judge

Jerry Smith
JERRY SMITH
Administrative Patent Judge

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Appeal No. 2000-0716
Application No. 08/840,947

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